

Message Text

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TO AMEMBASSY MOSCOW
INFO AMEMBASSY BELGRADE
AMEMBASSY BERLIN
AMEMBASSY BUCHAREST
AMEMBASSY BUDAPEST
AMCONSUL LENINGRAD
AMEMBASSY PRAGUE
AMEMBASSY SOFIA
AMEMBASSY WARSAW
USMISSION USUN NEW YORK

C O N F I D E N T I A L STATE 193734

MOSCOW ALSO FOR KAP

E.O. 11652: GDS

TAGS: OGEN, PFOR, PDIP, UR, US

SUBJECT: OFFICIAL US POSITION ON EMBASSY EXTRATERRITORI-
ALITY

REF: A. MOSCOW 16993 (NOTAL), B. STATE 184444 (NOTAL),
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C. MOSCOW 17258 (NOTAL)

1. THE DEPARTMENT AND THE EMBASSY HAVE CHARGED THE SOVIET
AUTHORITIES -- IN SEVERAL DEMARCHES TO THE SOVIETS (REFS A
- C) WITH VIOLATION OF FSO RAY SMITH'S PERSON AND EMBASSY
MOSCOW'S "EXTRATERRITORIALITY" IN CONNECTION WITH THE
ATTEMPT ON JULY 20 BY A SOVIET MILITIAMAN TO DENY SMITH

ENTRY TO THE EMBASSY.

2. THE DEPARTMENT'S AND THE EMBASSY'S ASSERTION OF THE LATTER'S EXTRATERRITORIAL STATUS WAS IN FACT TECHNICALLY INCORRECT. THE US DOES NOT, AND HAS NOT FOR MANY YEARS, VIEWED THE INVIOABILITY OF ITS DIPLOMATIC MISSIONS AS RESTING UPON THE CONCEPT OF EXTRATERRITORIALITY. EXTRA-TERRITORIALITY -- THE CONCEPT THAT A DIPLOMATIC ESTABLISHMENT IS AN ISLAND OF THE SENDING STATE'S SOIL DEEP IN THE HEART OF THE RECEIVING STATE -- WAS LONG AGO REPLACED IN US PRACTICE, AND IN THE PRACTICE OF OTHER STATES, BY THE MORE PRECISE AND LESS METAPHYSICAL PRINCIPLE OF INVIOABILITY. THERE ARE IMPORTANT PRACTICAL DIFFERENCES BETWEEN THESE CONCEPTS. INVIOABILITY OF DIPLOMATIC PREMISES OR ARCHIVES MEANS THAT THEY CANNOT BE ENTERED OR SEARCHED, EVEN UNDER THE AUTHORITY OF LOCAL LAW. HOWEVER, SUCH PREMISES MAY BE SUBJECT TO APPROPRIATE LOCAL REQUIREMENTS, SUCH AS CONFORMITY WITH ZONING REGULATIONS, AND LOCAL LAWS MAY BE APPLIED TO EVENTS WHICH OCCUR THERE. THE CONCEPT OF EXTRATERRITORIALITY, HOWEVER, IMPLIES TOTAL IMMUNITY FROM ALL AUTHORITY OF THE RECEIVING STATE. IT WOULD MEAN, FOR EXAMPLE, THAT THE RECEIVING STATE'S CRIMINAL LAW COULD NOT BE APPLIED TO CRIMINAL ACTS CARRIED OUT AGAINST DIPLOMATIC PREMISES OR AGAINST PERSONS WITHIN SUCH PREMISES.

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3. IN THE FUTURE, ADDRESSEES SHOULD BEAR IN MIND THE DISTINCTION DESCRIBED ABOVE BETWEEN INVIOABILITY AND EXTRATERRITORIALITY, AND SHOULD AVOID INCORRECT CHARACTERIZATION OF OUR PREMISES AS EXTRATERRITORIAL. WE SHOULD BE PARTICULARLY CAREFUL TO DRAW THIS DISTINCTION IN OUR DEALINGS WITH THE SOVIETS TO AVOID GIVING THEM THE BASIS FOR FUTURE ARGUMENTS THAT THEIR PREMISES IN THE US ARE EXTRATERRITORIAL AND THEREFORE WHOLLY IMMUNE FROM ALL EXERCISES OF US AUTHORITY.

4. INCIDENTALLY, WE NOTE THAT SOVIET LEGAL DICTIONARY, WHILE NOTING THAT THE TERM "EXTRATERRITORIALITY" COULD BE FOUND IN SOME EARLY STATUTES, SUCH AS THE PRINCIPLES OF CRIMINAL LAW OF THE USSR, ISSUED IN 1924, GENERALLY CRITICIZES THE CONCEPT AS A VESTIGE OF COLONIALISM AND MAKES CLEAR THAT PRESENT SOVIET PRACTICE IS TO RECOGNIZE "INVIOABILITY" ONLY. VANCE

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